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Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

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APR - 1 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

CS Docket No. 96-46

In the Matter of )

Implementation of Section 302 of )  
the Telecommunications Act of 1996 )

Open Video Systems )

TO: The Commission

**Comments of the  
National Association of Broadcasters**

NATIONAL ASSOCIATION  
OF BROADCASTERS  
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April 1, 1996

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## **Summary**

In adopting open video system (“OVS”) regulations, the Commission should recognize that it is venturing upon uncharted territory, for no actual OVS operations have even been proposed. The Commission, therefore, should take an initial cut at OVS regulations, but be prepared to make further changes as experience with actual systems dictates. In developing OVS regulations, however, the Commission should keep in mind Congress’ recognition that the regulatory environment governing cable carriage of broadcast signals should be replicated as far as possible on open video systems.

NAB agrees with the Commission that stations carried by an OVS operator under must carry should not count towards the operator’s program selection “cap.” Stations carried under retransmission consent agreements should be treated the same way.

The Commission should adopt technical standards for OVS to ensure compatibility with consumer equipment and to avoid interference. OVS operators should be required to use technical standards for carriage of video signals consistent with the standards developed for broadcast advanced television.

OVS operators should be required to provide notice to local broadcasters at least 60 days before service begins.

NAB supports the use of channel sharing arrangements. As the Commission proposed, however, OVS operators should only be allowed to offer programs on shared channels with the consent of stations or other program suppliers.

The Act applies the Commission's program exclusivity rules to open video systems. The OVS operator should be the party to whom broadcasters send exclusivity requests and should be responsible for ensuring compliance by all programmers on its system.

OVS operators should be required to make sure that all must carry signals are provided to all system subscribers. If an open video system serves subscribers in more than one television market, it should be required to either provide the appropriate local stations to different groups of subscribers or else to carry the must carry signals from each of the television markets the system serves. Similarly, OVS operators who choose to use only one signal processing point should be responsible for obtaining the signals from the local stations in each television market they serve. The OVS rules should recognize that each programmer on an open video system that carries a broadcast signal will need that station's consent. Broadcasters should be able to grant retransmission consent to one programmer and not to another on a system.

The Commission should require OVS operators whose systems permit the selection of channels to follow the channel positioning regulations imposed under must carry. For systems that use menus or other means to select programming, broadcast stations on the system should be prominently identified in the first menu or other program selection offered to consumers.

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The National Association of Broadcasters ("NAB")<sup>1</sup> submits these comments in response to the Commission's *Report and Order and Notice of Proposed Rulemaking* (hereinafter referred to as the *Notice*) in this proceeding.<sup>2</sup> The *Notice* begins the process of implementing section 302 of the Telecommunications Act of 1996,<sup>3</sup> which provides telephone companies and others with a new option for providing video services within their service areas to replace the "video dialtone" regime developed by the Commission.

The Commission is directed under the Act to adopt regulations governing open video systems ("OVS") within six months after the date of enactment. The Commission must

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<sup>1</sup> NAB is an incorporated association of broadcast stations and networks. NAB serves and represents the American broadcasting industry.

<sup>2</sup> FCC 96-99 (rel. March 11, 1996).

<sup>3</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996).

recognize, however, that no actual open video systems have been proposed and, to a great extent, such systems are at this point more a regulatory construct than an operating communications enterprise. Thus, while the Commission must and should take a “first cut” at establishing the regulatory regime that will govern open video systems and its certification process, it must also recognize that it is impossible to foresee all of the issues that may arise from specific OVS proposals or how those issues might best be resolved. Whatever action the Commission takes in this proceeding, therefore, it should view the rules it adopts as the beginning, and not the end, of the regulatory process. The Commission should keep this docket open and revise its OVS rules as experience — both with requests for certification of specific systems and operation of actual open video systems — may warrant.

In applying to open video systems regulations that were developed to govern carriage of broadcast signals by cable systems, the Commission should endeavor to provide broadcast stations with the same options and carriage rights as they have on cable systems to the maximum extent that OVS technology permits. Thus, if an open video system does not use traditional channel positions as the method for its subscribers to choose among the available program options, it should be required in the program selection system it adopts to provide a similarly prominent placement for local television stations as cable systems are required to under the must carry rules. In establishing the OVS option, Congress intended to provide telephone companies with substantial regulatory flexibility while, at the same time, recognizing that an open video system would have much the same “gatekeeper” function of a cable system. Therefore, Congress determined that they must be regulated to ensure that local television stations can continue to provide quality programming to subscribers and non-subscribers alike.

## **The Impact on Open Video Systems of Carrying Local Television Stations**

The Commission seeks comment (*Notice* ¶ 19) on the effect of carriage of local broadcast television signals on the calculation of the number of channels that the OVS provider may occupy. The Commission tentatively concludes that carriage of must carry stations should not be counted towards the one-third of channel capacity for which the OVS operator may select programming. NAB agrees that signals carried pursuant to an OVS operator's must carry obligations should not be counted towards its channel capacity "cap." The Commission correctly observes that the open video system operator could not be said to have "selected" these signals since they are carried at the sole choice of the broadcaster.

In addition, the goal of the must carry regulations — access to local broadcast stations by all subscribers to cable systems and similar multichannel video programming providers — supports excluding must carry signals from the calculation of the signals attributed to the OVS operator. Including must carry signals could create a disincentive to their carriage since the operator's ability to carry other, perhaps more directly remunerative, programs would be reduced. Excluding must carry signals from the operator's capacity calculations would remove any such incentives to avoid carrying local television signals.

Similarly, signals of local television stations that are carried by the operator pursuant to retransmission consent agreements should also not count against the operator's program selection limit. Signals of local commercial television stations carried by a cable system under retransmission consent count towards the system's must carry obligations.<sup>4</sup> In the same fashion, if a

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<sup>4</sup> See *Implementation of the Cable Television Act of 1992: Broadcast Signal Carriage Issues*, 8 FCC Rcd. 2965, 3003 (1993); S. REP. NO. 92, 102d Cong., 1st Sess. 37-38 (1991).

station chooses to negotiate for carriage with an OVS provider, its signal should have the same regulatory treatment as a local signal carried under must carry. Doing so will leave OVS operators with sufficient capacity to provide enough other types of signals to be competitive with cable systems and other multichannel video programmers while again ensuring that operators do not have a reason to avoid carrying local television signals.

## **Technical Issues**

In paragraph 23 of the *Notice*, the Commission asks for comments on whether it should specify technical standards for open video systems. Just as with cable systems, if open video systems are to develop as an effective distribution channel for a wide variety of video programming, the Commission must ensure that such systems follow common technical standards to ensure access to the system by different types of programmers and compatibility with consumer equipment and other distribution technologies. Three broad areas for design of a successful open video system are: the rules for digitizing the audio and video (compression techniques); the arrangement of the digital information for sending it (transport stream); and the “last mile” physical transportation of the signal to the service location (modulated or base-band).

In the current analog world, it should be clear that the video signal presented to all display devices must be NTSC compliant. To do otherwise would ignore the huge base of installed television sets. Any systems that do not deliver a NTSC modulation format signal to the home would require a converter box (unless it is NTSC at baseband video and baseband audio). This box would convert open video system-delivered programs to analog format for viewing on analog sets.



In the future digital world the situation will be much the same, in that the display devices must be able to build a picture from the information sent. In order to do this they must be programmed with standard rules for reconstructing a picture and audio. Proprietary compression systems would defeat universal access to program information by the consumer and restrict video programming providers' ability to use the delivery system.

Similarly, the bits need to be organized in a prescribed manner in order to be sent over communications networks. The receiving device needs to be able to reconstruct this 'payload' of bits. Without a common technical standard, open video systems would evolve with a variety of non-standard ways of compressing and packetizing the digital information that makes up the picture and sound and perhaps non-standard transmission methods for delivery to consumers homes. Sets conforming to the new digital ATV over-the-air standard would not be able to decode this non-standard digital information, thereby requiring additional provider-specific hardware (set-top boxes) to receive video programming.<sup>5</sup>

The impact of using different standards is clear. Each "open" video system provider using a non-standard method would be required to provide all the equipment in the path to the output devices, and if sufficiently divergent from the standard, might have to supply the display device and audio decoders as well. This approach is the exact opposite of the non-discriminatory access which is made possible through technical standards. Further, there is no need to develop new standards for compression and transport of video information for OVS. The multi-industry

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<sup>5</sup> Recording and playback of programs from a digital VCR also becomes a convoluted technical proposition and a sure source of consumer confusion and significant expense when different technical standards are used by the broadcast and other media. The lack of such a standard would be a *de facto* inhibitor to open access.

eight-plus year effort to develop a digital advanced television system has resulted in the standard that should be employed for OVS as well as all other digital video delivery systems.<sup>6</sup> In the transition period, conversion of digital signals into analog format will be needed, but it would be short sighted to also have to convert digital signals for digitally capable decoding and display devices.

### **Physical transportation issues**

As discussed in broadcasters' comments in the Commission's Advanced Television proceeding, it is essential that the Commission maintain its longstanding recognition of the importance of a universal standard for video systems.<sup>7</sup> This value is no less important in open video systems. A common standard should apply to all signals on open video systems, and that standard should be the broadcast standard. Since baseband digital delivery systems do not have a modulation subsystem, the modulation portion of the standard is not applicable to such delivery vehicles. However, the transport stream and compression standards are very relevant and should comply with ATSC A/53. All non-baseband open video systems should be required to use the ATSC A/53 modulation scheme unless the target medium cannot technically function with this modulation format.

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<sup>6</sup> See United States Advanced Television System Committee, Digital Television Standard. Document A/53 (Sept. 16, 1995). This standard is also fully compliant with the international MPEG-2 standard documented by the Organization for International Standards (ISO).

<sup>7</sup> Comments of the National Association of Broadcasters, MM Dkt. No. 87-268 (filed Nov. 20, 1995) at 8-10; Broadcasters' Reply to Comments on the Fourth Notice of Proposed Rulemaking, MM Dkt. 87-268 (filed Jan. 22, 1996) at 19-21. Rather than rearguing the same points, NAB hereby incorporates those comments by reference into these comments and urges the Commission to require OVS operators to construct systems fully compatible with the broadcast digital television standard.

## **Interference**

The premises equipment used for OVS reception has the potential to interfere with radio and television broadcast services. This interference can be directly on the broadcast frequency, or on other frequency bands used in receivers. The FCC TV interface device standards should thus be applied to the open access devices in customer premises. To the degree such devices perform the same function as a TV receiver, the requirements for those devices should be applied. Generally, the interference requirements that exist for any current service or device should be applied. In addition we believe that the Part 15 computing device permitted emission levels (that many of these devices must meet as a minimum) may not be adequate for interference protection. As a given emitter (such as the set-top box) is brought closer to a receiving device, the signal field strength to that receiver rises. Some set-top/back boxes will only be separated from receivers by a few inches. In this situation, stray signals that meet Part 15 Class B limits can be expected to be seen on the television receiver due to the effectively higher field strength.<sup>8</sup> Open video system providers have no rationale for being granted any special status, and must be required to correct any interference they cause to licensed services.

We urge the Commission to require that all open video systems use or be fully compatible with both analog and digital standards for television transmission. If this proves unfeasible for the complete open video system standard, the maximum amount of commonality

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<sup>8</sup> For direct pickup of signals by the display or signal processing device, the non-interfering level is a function of the degree of susceptibility in the display device as well as the field strength. Until the near field is reached, the ratio of the distance closer than 3 meters can be used to predict the effective increase in the signal strength over Class B levels. In the near field, the direct coupling into the receiver and its impact is a function of the field maximums and locations, but can be much worse in some cases.

between open video systems and broadcast standards should be sought, including modulation schemes, but especially packetizing structure and compression protocols, which are critical to open non-discriminatory access. In addition, the Commission should require, regardless of any technical choices that OVS operators are permitted to make, that open video systems be capable of, and required to, carry all portions of both analog and digital broadcast signals. The technical choices of an OVS operator should not be allowed to determine what broadcast services subscribers can receive.

## **Notification**

In Paragraph 14 of the *Notice*, the Commission seeks comment on the procedure — including the scope and form — that an OVS operator should follow in notifying video programming providers that it intends to establish an open video service. This issue is extremely important, because without proper notification video programmers would have little opportunity to discover that a system is in operation. And it is unique, in that the Commission has no similar notice requirements in other services.

The length of the notification period is especially crucial. There must be sufficient time for a video programmer to serve notice on the OVS operator that it desires carriage and to negotiate terms and conditions of carriage.<sup>9</sup> The most relevant current rule is 47 C.F.R. § 76.58 which requires cable operators to notify broadcasters at least 30 days before deleting them from carriage or repositioning their channel.

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<sup>9</sup> As the Commission has noted, OVS operators appear to have some latitude in providing carriage among various video programmers. NAB agrees with the Commission's proposal in paragraph 34 that OVS operators should be required to make carriage contracts publicly available, as a means for the Commission and video programmers to determine whether the OVS operator is discriminating unjustly among programmers.

NAB believes that, because carriage negotiations may take longer, the Commission should require OVS operators to give programmers at least 60 days notice before commencement of service. In addition to whatever general notice requirements the Commission adopts to permit unaffiliated programmers to obtain capacity on an open video system, OVS operators should be required to give written notice to each television station in the markets in which they will operate to permit them time to elect between must carry and retransmission consent and, if needed, to negotiate retransmission consent agreements. To the extent that other program providers have made arrangements to be carried on an open video system, the identity of those other programmers should be specified in the notice to broadcasters.

### **Channel Sharing**

The Commission also seeks comment (*Notice* ¶¶ 35-41) on various aspects of channel sharing arrangements among video programmers, as a means of making the most efficient use of channel capacity. NAB favors the use of channel sharing arrangements among programmers.<sup>10</sup> Some stations may bargain with numerous programmers for carriage or, as described below, may elect for must carry on the OVS system. Through shared analog channels, subscribers to a programmer's service could still be able to receive such stations on an analog channel, possibly at the same channel position as the station's over-the-air signal. Channel sharing could thus make OVS more attractive to subscribers.

At paragraph 37 of the *Notice*, the Commission concludes that it should not require — only permit — OVS operators to participate in the administration of shared channels. The

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<sup>10</sup> Channel sharing should be a part of the retransmission consent bargain, and not something generally within the control of OVS operators.

Commission would allow an OVS operator choosing not to administer the shared channels to select another entity to do so. NAB believes that the OVS operator is the best entity to administer channel sharing arrangements. Once retransmission consent has been obtained, channel sharing becomes largely a technical issue. As overlord of the system, the OVS operator could most easily accommodate video programmers who wish to share a channel that is already part of another programmer's service. The second programmer would merely be required to notify the OVS operator and show proof of retransmission consent. The operator could then include that channel as part of the programmer's service.<sup>11</sup>

### **Application of the Network Non-Duplication, Syndicated Exclusivity and Sports Exclusivity Rules**

Section 653(b)(1)(D) of the Communications Act requires the Commission to apply its rules protecting broadcasters' interests in exclusive rights to programming to open video systems. Without these provisions, OVS operators — particularly those which extend over large geographic areas encompassing several television markets — could carry distant signals into local markets, thus destroying the value of exclusive rights to programming for which broadcasters have bargained. The requirement that these rules apply to OVS is another reflection of Congress' determination that open video systems provide the same type of protection for local television stations as do cable systems.

The *Notice* (§ 46) asks several questions about applying these rules to OVS. First, the Commission asks how these rules should be applied to open video systems that provide service across several (perhaps many) community units. The Commission must require open video

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<sup>11</sup> In order to reduce subscriber confusion, the shared channel should be an integrated part of the programmer's package.

systems to comply with the exclusivity rules as they are written. This means that, in designing systems, OVS operators must provide means by which certain programs will be delivered to homes in particular locations, and other programs sent to homes in other areas. Thus, open video systems should be designed to enable the operator to comply with the exclusivity rules. If an open video system provides service across community unit lines (or across other geographic limits on exclusivity), the operator must ensure that programs for which local stations have exclusive rights are not delivered to homes within the stations' protected areas.

Related to this issue is the Commission's second question — which entity should be responsible for compliance with the exclusivity rules? The OVS operator should be the party responsible for complying with the exclusivity rules. Providers of video programming on an open video system may change and their programming selections may also vary, both without any notice to local broadcasters. Stations may, therefore, have no knowledge of who is the entity carrying a particular program in violation of the rules. Requiring stations to provide notices to each provider of video programming on an open video system would create substantial burdens on them to determine who is providing programming on a particular system at any given time, and would result in stations having to file numerous and duplicative notices with each provider.

Placing the responsibility of compliance on the OVS operator would permit stations to file only one notice for an entire system. The operator will know all of the entities that provide programming over the system and can efficiently and easily notify all programmers of broadcaster requests for exclusivity. Further, unaffiliated program suppliers may not hold licenses or be otherwise readily subject to Commission sanctions for violation of the rules, while OVS operators will be fully subject to Commission regulation. Operators could include a standard contractual provision with all unaffiliated program suppliers requiring them to comply

with the exclusivity rules and with any requests for exclusivity from local stations that the operator receives.<sup>12</sup>

### **The Application of Must Carry and Retransmission Consent to Open Video Systems**

The regulatory core of the relationship between broadcasters and cable systems are the twin requirements of must carry and retransmission consent created by the Cable Act of 1992. 47 U.S.C. §§ 325(b), 614-15. Section 653(c)(2)(A) requires the Commission to extend the same requirements to open video systems, imposing obligations that “are no greater or lesser” than those imposed on cable systems. Although the specific application of the must carry and retransmission consent rules may have to vary for particular open video systems, the Commission should seek to minimize those differences and provide in the OVS environment the same carriage rights as broadcasters have on cable systems.

The Commission (*Notice* ¶ 59) notes that there may be multiple independent programmers on an open video system and asks whether the must carry requirement that local signals be provided to all subscribers should be carried into the OVS context. When Congress adopted must carry, it explicitly concluded that ensuring the universal availability of local signals was sufficiently important to require that all cable subscribers receive must carry signals, regardless of whether some subscribers might have elected to purchase program packages without some or all of those signals. The same principle should apply to operators of cable systems and they should make sure that all must carry signals reach every subscriber on their

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<sup>12</sup> In these circumstances, the Commission would not expect to impose sanctions on an OVS operator for violations of the exclusivity rules by an unaffiliated program supplier if the operator provided proper notices to the program supplier and took prompt steps to stop the distribution of the infringing program once it was notified of the violation.



systems. The *Notice* suggests that one way to achieve this would be a requirement that all subscribers be required to purchase a basic package of programs akin to the basic “tier” on cable systems. Whether the OVS operator requires all subscribers to take a minimum package of programs, or instead requires unaffiliated program suppliers to include must carry channels in their program packages, or chooses some other means of complying with the rules, need not be specified by the Commission once it specifies that the operator must ensure distribution to all system subscribers.

Paragraph 60 of the *Notice* asks how the must carry obligations of open video systems that serve communities in more than one television market should be defined. The Commission addressed this issue when it adopted must carry rules for cable systems. *Implementation of the Cable Television Act of 1992: Broadcast Signal Carriage Issues*, 8 FCC Rcd. 2965, 2975-76 (1993). It then held that if a cable system serves communities in two or more television markets, it may not meet its must carry obligations by carrying only the television signals from one of those markets. Instead, it may provide to each market only the must carry signals associated with that market if the system has the technical capability to carry different signals to different areas. If not, it must carry all must carry signals, even if some would largely duplicate each other. The same rule should apply to open video systems: if they provide service across several television markets, they must arrange to provide at least the appropriate signals to each community, whether by switching among several signals or carrying additional must carry signals.

Another issue that may arise with open video systems concerns the availability of broadcast signals to open video systems that may cover large geographic areas. If such systems employ multiple receive antennas or “headends,” the principles that the Commission developed to govern signal strength claims raised by cable systems should apply. If an OVS operator

instead chooses to use only one receive antenna far removed from the broadcast stations serving the system's subscribers, the operator should not be permitted to use the design of its system as a reason for avoiding must carry obligations. Systems so designed should be required to make arrangements to obtain the signals from each television station in the markets they serve.

Further, must carry stations that provide signals of adequate strength to cable systems in their market should not be required to absorb extraordinary costs to provide their signals to distant signal processing locations of open video systems.

It is very likely that every open video system will have channel capacity far larger than most cable systems have today because it would make little economic sense to invest in technology of limited capability. Indeed, because open video systems will probably employ digital technology, their effective channel capacity is likely to be far greater than any present cable system.<sup>13</sup> Most cable systems have sufficient capacity that all qualified local stations can be carried within the capacity "cap" specified in section 614(b)(1) of the Act. Since the number of operating television stations is not likely to substantially increase, there is little need for the Commission to develop rules to calculate the number of must carry signals that open video systems must provide. Should an open video system be proposed that could not accommodate all must carry signals, the Commission could then specify any applicable minimum carriage requirements.<sup>14</sup>

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<sup>13</sup> See Broadcasters' Comments on the Fourth Notice of Proposed Rulemaking, MM Dkt. No. 87-268 (filed Nov. 20, 1995), at 33 n.39 (one standard six MHz digital cable channel can carry at least eight NTSC or two HDTV broadcast channels).

<sup>14</sup> The Commission asks how it should apply must carry obligations if (1) systems are constructed that provide only one signal at a time to the home, providing all switching at a central office, or (2) systems are proposed that are incapable of carrying video programming in real time. There should be no difficulty for systems that provide only

In developing carriage rules for open video systems, the Commission should also provide for carriage of digital Advanced Television signals of local broadcasters. Section 614(b)(4)(B) of the Act requires the Commission to modify its carriage rules to ensure of digital broadcast signals. During the transition from NTSC to digital television, open video systems that have the capability to carry digital signals should, like cable systems, be obliged to carry both the analog and digital signals of local stations.

As the Commission recognized in implementing the Cable Act, the requirement of obtaining retransmission consent fully applies to entities providing video programming over telephone company facilities. *Implementation of the Cable Television Act of 1992: Broadcast Signal Carriage Issues*, 8 FCC Rcd. 2965, 2996-98 (1993). Thus, any program supplier on an open video system, including the operator and any unaffiliated programmer, must have the consent of any broadcast station before they can retransmit its signal. The Commission must provide in its open video system rules means by which local broadcasters can elect between must carry and retransmission consent on open video systems. At a minimum, those rules should require that system operators provide notice to local stations.

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one channel at a time to the home to comply with the must carry rules since each required signal can be made available at the central switch. The requirement is that all qualified local signals be made available to subscribers, not necessarily that all be provided simultaneously. It is therefore appropriate for the Commission to presume (*Notice* ¶ 18) that the capacity of such systems is unlimited and such systems should not be permitted to argue that they lack capacity to meet their signal carriage obligations. It does not appear likely that an operator would construct a system that could not carry programming on a real time basis since that would exclude carriage of most cable programming as well as broadcast channels. Section 614(b)(4)(A), of course, requires that systems provide the same quality of carriage for local broadcast stations that they provide for any cable programming. This may also be an area where development of specific rules should await examination of an actual system proposal.

The Commission should make clear that stations may grant retransmission consent to one programmer on an open video system and deny such consent to others. Further, the provision in section 325(b)(3)(B) of the Act that requires broadcasters to make a common election for all cable systems that serve the same geographic area applies by its terms only to cable systems. By definition, open video systems are not cable systems. Therefore, broadcast stations should be free to make different elections between must carry and retransmission consent on cable systems and open video systems, even if they serve the same areas.

## **Navigation**

Nondiscriminatory navigation through an open video system is essential in ensuring that OVS is truly “open.” Subscribers must be able to quickly and easily access programming provided by video programmers other than the OVS operator’s affiliate. Otherwise, the affiliate would have an unfair advantage over unaffiliated programmers.

The Act requires the Commission to apply to OVS the channel positioning rules found in Section 614(b)(6). This should be easily accomplished in those systems that use analog-style channels, as a station could be assigned to the OVS channel corresponding to its over-the-air channel (or a better channel, if the station and the system operator agree). Channel positioning on systems that are menu-driven is more problematic, however. There may be no “channels,” and therefore menu placement becomes essential to subscriber identification of and access to local broadcast signals.

NAB urges the Commission to adopt regulations to prevent OVS operators from impeding consumer access to local broadcast signals through such means as discriminatory menu placement and software manipulation. Specifically, the OVS operator should be required:

1. To display clearly and prominently at the beginning of the program guide or menu of program offerings the identity of any signal or any television broadcast station that is carried by the OVS operator.
2. To ensure that viewers are able to access the signal of any television broadcast station that is carried by the OVS operator without first viewing a program guide or menu reflecting non-broadcast program offerings.
3. To ensure that video programming providers are able to transmit suitable and unique identification of their programming services to subscribers without change or alteration.
4. To ensure that the last viewed channel/programming services prior to a consumer's turning off the TV set/receiver will be the first viewed channel/programming service when a consumer reinitiates viewing.

These requirements will help ensure that OVS subscribers have ready access to the local over-the-air broadcasters who are licensed to serve them, while also ensuring that OVS operators do not discriminate against broadcasters and other video programmers in favor of the OVS operators' affiliated programmers. NAB urges the Commission to adopt these requirements.

## **Other Issues**

Paragraphs 67-70 of the *Notice* request comment on the information that the Commission should require OVS operators to provide in seeking certification. Before approving a request for certification from an OVS operator, the Commission should require the operator to certify that it will be in full compliance with the must carry and program exclusivity rules.


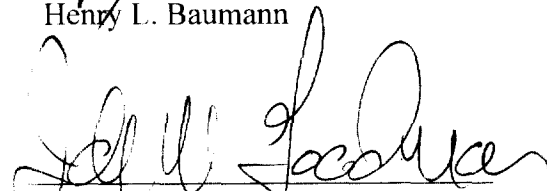
The *Notice* (§§ 71-72) also requests comment on ways to resolve disputes concerning the operation of open video systems. In addition to the remedies that the Commission provides, it should make clear that broadcast stations and other parties remain entitled to seek both other remedies provided under the Communications Act and any other remedy provided by state or federal law.

## Conclusion

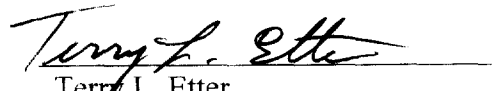
The Telecommunications Act provided the Commission with only a few months in which to develop rules governing an entirely new type of video programming distributor. In this proceeding, the Commission should adopt the rules necessary to begin OVS service and should make clear the principles that it will apply in examining OVS applications. Among those principles is Congress' recognition of the preeminent place of local over-the-air broadcasting in our communications system. The Commission should carefully examine the operation of OVS systems and make any needed adjustments in its rules that experience shows are needed.

Respectfully submitted,

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